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10/632,188	07/30/2003	Suzanne Davison	179222/0002	3959

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EXAMINER
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ALI, SHUMAYA B

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/632,188

Applicant(s)

DAVISON ET AL.

Examiner

Shumaya B. Ali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 7/30/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 8, 12, 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11, 13 and 15-31 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                        |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>detailed action</u> .                             |

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

**Species 1: figures 1-5, Species 2: figures 6-7, species 3: figure 8, species 4: figure 9, and species 5: figure 10.**

2. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1,3,4,7,9,10,11,13,15,16,19,20,22-27,30,31 are generic.

3. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

4. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

5. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the

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inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. During a telephone conversation with attorney Kara Bonitatibus on 3/31/05 a provisional election was made with traverse to prosecute the invention of species 1, figure 1-5 claims 2,5,6,17,18,21,28,29. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8,12, and 14 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-3,5-11,13,15-16, 25-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over**

**Schwebel US Patent Application Publication 2003/0193644A1 in view of Rhoades et al. US Patent**

**6,247,811 B1**

8. As to claim 1, Schwebel discloses an apparatus for treating dry eye conditions comprising: a pair soft, pliable (regarding soft and pliable, applicant has not established criticalities regarding the constructive nature of the lenses. In addition, the claimed limitation is considered obvious design choice since the nature/design of the lenses has to accommodate the nature/design of the frame they will be engaged in. Therefore, it would have been obvious to one of ordinary skills in the art to modify the lenses of Schwebel in order to make the lenses soft/pliable or curved for the purposes

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of accommodating the shape of the frame they will be engaged in) of curved (Schwebel discloses a frame constructed to conform generally to the contour of the user's face, see 0043 lines 5-6, additionally discloses frame front may be structured in a fashion generally similar to a goggles and eyeglasses discloses in figures 3 and 4. Also stated one skilled in the art will readily realize that the general principal can be adapted to any sort of eyewear construction, see 0042 lines 4-12.

Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to construct the lenses curved or other design choices for the purposes of adapting the lenses to any sort of eyewear construction) lenses (see fig.3 reference object 40), each of said lenses maintained within a frame (see fig.3 reference object 28); a soft pliable (see 0044 lines 1-2) gasket (seal) (see fig.4 reference object 38) on a back portion of each of said frames, said gasket designed to substantially encircle and contact the orbital bone of an eye socket of the wearer (fig.3 discloses an eyeglasses which is considered to encircle at least the eyes and therefore capable of substantially encircling the orbital bone as well; see 0043 lines 7-8); a bridge (see fig.3 reference object 34) coupling said frames; and a flexible, contoured strap (see fig.1 reference object 18) having two end portions (the end portions are coupled to mask 12 in fig.1) and a center portion (portion between the two ends), wherein said two end portions are coupled to said frames and said center portion is designed so as to maintain said apparatus on a wearer (see 0039 lines 1-6) (embodiment 1 discloses an elastic strap and embodiment 3 discloses a temple as retaining means. Schwebel discloses that the strap disclosed in embodiment 1 may be used on eyeglasses, see 0039 lines 3-4, therefore it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the temple of embodiment 3 in view of 1 in order to provide an elastic strap for the purposes of retaining the eyeglass in a comfortable position in apposition to the face of an user, see 0039 lines

5-6); said apparatus adapted and constructed to increase or maintain the humidity around the eyes of the wearer by reducing the evaporation of natural or artificial tears, or added moisture, and by increasing or maintaining the temperature around the eyes of the wearer (see 0027 lines 1-5), however does not disclose a pair of soft frame.

9. As to claim 1, limitation "soft, pliable frame" Rhoades et al. teach a multi-purpose eyewear that uses a pliable frame constructed from a pliable material that is conformable to the contours of the human face (see col.3 lines 51-55). The frame is also considered soft since it is capable of contouring around the face. Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the frame of Schwebel in view of Rhoades et al. in order to make it soft and pliable for the purposes of contouring around the face and further achieve a fluid tight seal around the wearer's face.

10. As to claim 2, Schwebel discloses the apparatus of claim 1, further comprising a moisture pad (see fig.4 reference object 46) adapted to be maintained between said apparatus and the eyes of the wearer (see 0044 lines 5-8), said moisture pad desired and constructed to aid in increasing or maintaining the humidity around the eyes of the wearer (see 0053 lines 8-11).

11. As to claim 3, Schwebel discloses the apparatus of claim 2, wherein said moisture pad is formed of an endothermic or exothermic material (see 0044 lines 11-12; 0040 lines 1-3).

12. As to claim 4, Schwebel does not disclose the apparatus of claim 2, wherein said moisture pad is formed of a visco-elastic foam, however applicant has not establish criticalities regarding a particular type of moisture pad used in the invention. Therefore, the pad disclosed by Schwebel is considered an equivalent structure capable of providing the similar function of a moisture pad made from a visco-elastic foam (see 0053 lines 8-11).

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13. As to claim 5, Schwebel discloses the apparatus of claim 1, wherein each of said lenses and said frames are formed as unitarily structures (see 0043 lines 1-3).

14. As to claim 6, Schwebel discloses the apparatus of claim 1, wherein said lenses, said frames, and said bridge are formed as a unitary structures (see 0043 lines 1-3).

15. As to claim 7, Schwebel does not discloses the apparatus of claim 1, wherein said lenses and said frames are each formed of flexible polyurethane, however applicant has not established criticalities regarding lenses constructed from polyurethane versus other alternative lens construction material. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have lenses constructed from a flexible polyurethane or an alternative material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

16. As to claim 9, Schwebel discloses the apparatus of claim 1, wherein said lenses are opaque (see 0043 line 4).

17. As to claim 10, Schwebel discloses the apparatus of claim 1, wherein said lenses are translucent (see 0043 line 5).

18. As to claim 11, Schwebel discloses the apparatus of claim 1, wherein said lenses are colored 0043 line 5).

19. As to claim 13, Schwebel discloses the apparatus of claim 1, wherein said gaskets are formed of visco-elastic foam (embodiment 3 does not disclose visco-elastic foam gasket, however embodiment 1 discloses a gasket 16 may be made from closed or open cell foam, silicon or moisture impermeable fabric, see 0038 lines 8-10. The closed/open cell foam is considered visco-elastic type

material. Therefore it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the gasket of embodiment 3 in view of embodiment 1 in order to provide a visco-elastic foam gasket for the purposes of providing comfortable junction between the gasket and the skin of the user).

20. As to claim 15, Schwebel discloses the apparatus of claim 1, wherein said gaskets are formed of an endothermic or exothermic material (seal is made from either closed or open cell foam, silicon or moisture impermeable fabric. Therefore, the seal material is capable of releasing heat).

21. As to claim 16, Schwebel discloses the apparatus of claim 1, wherein said gaskets are at least primarily covered with a fabric (embodiment 3 does not disclose visco-elastic foam gasket, however embodiment 1 discloses a gasket 16 may be made from closed or open cell foam, silicon or moisture impermeable fabric, see 0038 lines 8-10. The closed/open cell foam is considered visco-elastic type material. Therefore it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the gasket of embodiment 3 in view of embodiment 1 in order to provide a visco-elastic foam gasket for the purposes of providing comfortable junction between the gasket and the skin of the user).

Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwebel US Patent Application Publication 2003/0193644A1 and Rhoades et al. US Patent 6,247,811 B1 and in view of Kawashima US Patent 6,721,963 B1

22. As to claim 17, Schwebel does not disclose the apparatus of claim 1, wherein said center portion of said strap is wider than said two end portions of said strap.

23. As to claim 17, Kawashima teaches an eye protection device; goggles with a head strap (see fig.1 reference object 12) where the ends of the strap connecting to buckles (see fig.1 reference object



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**20) and a central portion (see labeled fig.1, attachment below) situated between the two ends are wider than the end portions of the strap. Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the strap of Schwebel in view of Kawashima in order to make the ends of the straps narrower than the center portion for the purposes of better accommodating a wearer's head and further prevent slipping of the strap by providing a larger area at the center.**

**24. As to claim 18, Schwebel does not disclose the apparatus of claim 17, wherein said strap is formed of a four-way stretch polyester blend.**

**25. As to claim 18, Kawashima teaches an eye protection device, goggles with a head strap (see fig.1 reference object 12) made of a flexible material such as rubber, plastic elastomer or elastically stretchable synthetic fiber (see col.4 lines 17-20). Flexible strap of Kawashima is considered a four-way polyester blend since the strap is capable of stretching in an upward/downward direction along the central portion and a right or left direction along the two end portions discussed above. Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the strap of Schwebel in view of Kawashima in order to provide a four way polyester blend for the purposes of better accommodating a wearer's heads.**

**Claims 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwebel US Patent**

**Application Publication 2003/0193644A1**

**26. As to claim 19, Schwebel discloses an apparatus for treating dry eye conditions comprising: a pair of soft pliable (regarding soft and pliable, applicant has not established criticalities regarding the constructive nature of the lenses. In addition, the claimed limitation is considered obvious design choice since the nature/design of the lenses has to accommodate the nature/design of the frame**

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they will be engaged in. Therefore, it would have been obvious to one of ordinary skills in the art to modify the lenses of Schwebel in order to make the lenses soft/pliable or curved for the purposes of accommodating the shape of the frame they will be engaged in), curved (Schwebel discloses a frame constructed to conform generally to the contour of the user's face, see 0043 lines 5-6, additionally discloses frame front may be structured in a fashion generally similar to a goggles and eyeglasses discloses in figures 3 and 4. Also stated one skilled in the art will readily realize that the general principal can be adapted to any sort of eyewear construction, see 0042 lines 4-12.

Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to construct the lenses curved or other design choices for the purposes of adapting the lenses to any sort of eyewear construction) eyecups (see fig.3 reference object 40) each of said eyecups designed and constructed to substantially encircle and contact the orbital bones of the eye sockets of the wearer (fig.3 discloses an eyeglasses which is considered to encircle at least the eyes and therefore capable of substantially encircling the orbital bone as well; see 0043 lines 7-8); while minimizing tissue pressure and occlusion of the blood and lymphatic vessels in the orbital area, so as to comfortably increase or maintain the humidity around the eyes of the wearer by reducing the evaporation of natural or artificial tears, or added moisture, and by increasing or maintaining the temperature around the eyes of the wearer.

27. As to claim 20, Schwebel discloses the apparatus of claim 19, further comprising a visco-elastic gasket (embodiment 3 does not disclose visco-elastic foam gasket, however embodiment 1 discloses a gasket 16 may be made from closed or open cell foam, silicon or moisture impermeable fabric, see 0038 lines 8-10. The closed/open cell foam is considered visco-elastic type material. Therefore it would have been obvious to one of ordinary skills in the art at the time the invention

was made to modify the gasket of embodiment 3 in view of embodiment 1 in order to provide a visco-elastic foam gasket for the purposes of providing comfortable junction between the gasket and the skin of the user) positioned on each of said eyecups (see fig.3 reference object 38, gasket seem to be positioned on each eyecups).

28. As to claim 21, Schwebel discloses the apparatus of claim 19, further comprising a moisture pad (see fig.4 reference object 46) adapted to be maintained between said eyecups and the eyes of the wearer (see 0044 lines 5-8), said moisture pad designed and constructed to aid in increasing or maintaining the humidity around the eyes of the wearer (see 0053 lines 8-11).

29. As to claim 22, Schwebel discloses an apparatus for treating dry eye conditions comprising: a pair of soft pliable (regarding soft and pliable, applicant has not established criticalities regarding the constructive nature of the lenses. In addition, the claimed limitation is considered obvious design choice since the nature/design of the lenses has to accommodate the nature/design of the frame they will be engaged in. Therefore, it would have been obvious to one of ordinary skills in the art to modify the lenses of Schwebel in order to make the lenses soft/pliable or curved for the purposes of accommodating the shape of the frame they will be engaged in) curved (Schwebel discloses a frame constructed to conform generally to the contour of the user's face, see 0043 lines 5-6, additionally discloses frame front may be structured in a fashion generally similar to a goggles and eyeglasses discloses in figures 3 and 4. Also stated one skilled in the art will readily realize that the general principal can be adapted to any sort of eyewear construction, see 0042 lines 4-12.

Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to construct the lenses curved or other design choices for the purposes of adapting the lenses to any sort of eyewear construction) eyecups (see fig.3 reference object 40), each of said

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eyecups designed and constructed to substantially encircle and contact the orbital bones of an eye socket of the wearer (**fig.3 discloses an eyeglasses which is considered to encircle at least the eyes and therefore capable of substantially encircling the orbital bone as well; see 0043 lines 7-8**); a thin, soft elastic strap having two end portions attached to said eyecups and designed so as to maintain the apparatus on the wearer (**see 0039 lines 1-6**) (**embodiment 1 discloses an elastic strap and embodiment 3 discloses a temple as retaining means. Schwebel discloses that the strap disclosed in embodiment 1 may be used on eyeglasses, see 0039 lines 3-4, therefore it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the temple of embodiment 3 in view of 1 in order to provide an elastic strap for the purposes of retaining the eyeglass in a comfortable position in apposition to the face of an user, see 0039 lines 5-6**); and wherein said eyecups and strap each are formed of specific flexible materials (**elastic, see 0039 line 2**) such that said apparatus can be adjusted in the as worn position so that the dynamic tension between the eyecups and the strap provide a comfort level associated with a maximum 50% IFD of said eyecups while the humidity proximate the eye sockets of the wearer (**see 0027 lines 1-5**).

**30. As to claim 23, Schwebel discloses** the apparatus of claim 22, further comprising a pair of visco elastic gaskets positioned on said eyecups (**see fig.4 reference object 38**), wherein said gaskets provide an effective seal around the eye sockets of the wearer (**see 0044 lines 1-3**).

**31. As to claim 24, Schwebel discloses** an apparatus for treating dry eye conditions comprising: a pair of soft, pliable (**regarding soft and pliable, applicant has not established criticalities regarding the constructive nature of the lenses. In addition, the claimed limitation is considered obvious design choice since the nature/design of the lenses has to accommodate the nature/design of the frame they will be engaged in. Therefore, it would have been obvious to modify the lenses of**

Schwebel in order to make the lenses soft/pliable or curved for the purposes of accommodating the shape of the frame they will be engaged in), curved (Schwebel discloses a frame constructed to conform generally to the contour of the user's face, see 0043 lines 5-6, additionally discloses frame front may be structured in a fashion generally similar to a goggles and eyeglasses discloses in figures 3 and 4. Also stated one skilled in the art will readily realize that the general principal can be adapted to any sort of eyewear construction, see 0042 lines 4-12). Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to construct the lenses curved or other design choices for the purposes of adapting the lenses to any sort of eyewear construction) lenses (see fig.3 reference object 40), each of said lenses maintained within a frame (see fig.3 reference object 28); a soft pliable (see 0044 lines 1-2) gasket (seal) (see fig.4 reference object 38) on a back portion of each of said frames, said gasket desired to substantially encircle and contact the orbital bones of an eye socket of the wearer (see 0039 lines 1-6) (embodiment 1 discloses an elastic strap and embodiment 3 discloses a temple as retaining means. Schwebel discloses that the strap disclosed in embodiment 1 may be used on eyeglasses, see 0039 lines 3-4, therefore it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the temple of embodiment 3 in view of 1 in order to provide an elastic strap for the purposes of retaining the eyeglass in a comfortable position in apposition to the face of an user, see 0039 lines 5-6); a bridge (see fig.3 reference object 34) coupling said frames; said apparatus adapted and constructed to increase or maintain the humidity around the eyes of the wearer by reducing the evaporation of normal or artificial tears, or added moisture and by increasing or maintaining the temperature around the eyes of the wearer (see 0053 lines 8-11), however does not disclose a pair of soft, pliable lenses.

32. As to claim 24, limitation “soft, pliable frame” Rhoades et al. teach a multi-purpose eyewear that uses a pliable frame constructed from a pliable material that is conformable to the contours of the human face (see col.3 lines 51-55). The frame is also considered soft since it is capable of contouring around the face. **Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the frame of Schwebel in view of Rhoades et al. in order to make it soft and pliable for the purposes of contouring around the face and further achieve a fluid tight seal around the wearer’s face.**

#### ***Claim Objections***

33. Claim 22 is objected to because of the following informalities: applicant is suggested to verify any technical error presented in line 7, “in the as”. Appropriate correction is required.

#### ***Conclusion***

34. The prior art made of record on form PTO-892 and not relied upon shows various eye protective devices.

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Shumaya B. Ali** whose telephone number is **571-272-6088**. The examiner can normally be reached on M-F 8:30 am-4: 30 pm.

36. If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, **Henry Bennett** can be reached on **571-272-4791**. The fax phone number for the organization where this application or proceeding is assigned is 571-273-6088.

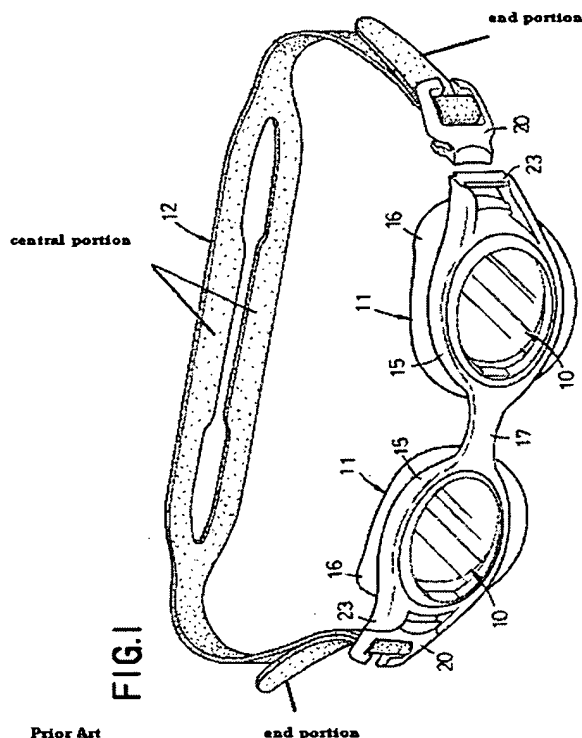
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private

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*Shumay Ali*  
Examiner  
Art Unit 3743  
4/1/2005

*Harry Bennett*  
Supervisory Patent Examiner  
Group 3700



Prior Art  
U.S. Patent  
US 6,721,963 B1